Office of Chief Counsel Internal Revenue Service

memorandum

CC:LM:TL-N-5733-00 MFLeichtman

date:

to: Gary Chin
Audit Team Coordinator

from: MICHELE F. LEICHTMAN

Attorney

subject:

- Interest Netting

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DISCUSSION

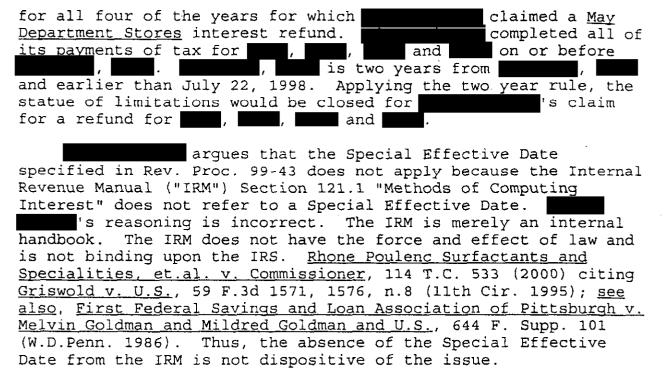
Taxpayer ("(") claimed a refund on
interest for the taxable years, and pursuant
to the holdings in May Department Stores Company and Subsidiaries
v. United States, 36 fed. Cl. 680 (1996) and Sequa Corporation v.
<u>United States</u> , 99-1 U.S. Tax Cas. (CCH) ¶ 50,379 (1998).
's statutes of limitations for claiming a refund on
overpayments for the taxable years , , , and , and were
closed as of is not entitled to the
refunds claimed.

ANALYSIS

May Department Stores and Sequa Corporation defer the running of interest on a deficiency where a taxpayer claims an overpayment for the taxable year and then applies the overpayment to the following year's estimated tax payments and does not request a refund for the overpayment. In such a situation, interest begins to run from the time that the taxpayer needs to apply the overpayment to the following year's estimated tax payment rather than from the time the deficiency arises. May Department Stores, supra; Rev. Rul. 99-40; Chief Counsel Notice N(35)000-168. For example, X Corp. files its 1998 federal income tax return on September 15, 1999 claiming an overpayment of 10x and requests to apply the overpayment to its estimated tax payments for the following year. X Corp needed to make quarterly estimated tax payments of 10x for each quarter in 1999. However, X Corp made quarterly estimated tax payments of 10x for each of the first two quarters of 1999 and made estimated tax payments of 5x for each of the last two quarters of the year. Accordingly, X Corp's overpayment was applied in the amounts of 5x for the third quarter and an additional 5x for the fourth quarter. determined that X Corp. had a deficiency, in the amount of 10x, for the taxable year 1998. Applying May Department Stores, interest will start running on X Corp's underpayment to the extent of 5x as of its 1999 third quarter estimated tax payment and an additional 5x as of its 1999 fourth quarter estimated tax payment.

Under Rev. Pro. 99-43, a taxpayer can claim a refund of interest pursuant to May Department Stores. However, the Special Effective Date rule in Rev. Proc. 99-43 requires that to claim a refund pursuant to May Department Stores, a taxpayer's statute of limitations for claiming such refund must be open on July 22, 1998. Rev. Proc. 99-43 § 4. The statute of limitations for claiming a refund is the later of three years from the date that a taxpayer files its federal income tax return or two years from the date that a taxpayer pays federal income tax for the relevant taxable year. I.R.C. § 6511(a). For , and filed its income tax return on or about September 15 of the calendar year following the relevant taxable year. filed its federal income tax for the on September 15, . September 15, is three years from September 15, and earlier than July 22, 1998. Applying the three year rule, the statute of limitations for claiming a refund would be closed

filed its federal income tax returns for and on September 15, september 15, and september 15, respectively.



CONCLUSION

By virtue of the Special Effective Date in Rev. Proc. 99-43, is not entitled to its <u>May Department Store</u> refund claims for _____, ____ and _____.

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